

**MINUTES OF THE MEETING OF THE
UNIFORM COMMERCIAL CODE COMMITTEE
OF THE STATE BAR OF CALIFORNIA**

February 3, 2005
9:30 a.m. to 12:30 p.m.
Offices of Pillsbury Winthrop, LLP
Los Angeles, San Francisco, Palo Alto, San Diego

The February 3, 2005 meeting of the Uniform Commercial Code Committee (the “Committee”) was called to order at approximately 9:30 a.m. with Sandra Shippey and Vasco Morais presiding.

A. ADMINISTRATIVE MATTERS.

1. **Roll Call.** Members of the Committee in attendance announced themselves and Vasco Morais, acting as the committee secretary, recorded attendance (see below).

2. **Approval of January 7, 2005 Meeting Minutes.** The Committee review and approved, as presented, the minutes of the January 7, 2005, meeting.

3. **Future Meeting Dates/Locations.** The Committee reconfirmed and established Thursday, March 3rd at 9:30 a.m.; Thursday, April 14th at 9:30 a.m; and Thursday May 5th as the dates of future videoconference UCC Committee meetings to be held at the offices of Pillsbury Winthrop. The Committee decided to hold the May 5th meeting in-person in Oakland.

4. **Open Committee Positions.** Sandra Shippey requested consideration of the application and nomination of Kathleen Rothman to fill a current vacancy on the UCC Committee. Kathleen Rothman’s nomination was made, seconded and unanimously approved by the Committee. Sandra Shippey indicated that she would forward Kathleen Rothman’s application to the BLS Executive Committee for its consideration and approval. Sandra Shippey noted that the UCC Committee is still accepting applications to fill other vacancies. Sandra Shippey also indicated that Jan Kosel, Matthew Polesetsky, and Jim Hayes are currently fulfilling the unexpired terms of a former members of the UCC Committee, which terms expire in 2005, and that each of these Committee members have offered to reapply for a full term. The reapplications of Jan Kosel, Matthew Polesetsky, and Jim Hayes were unanimously approved by the Committee with their full terms to commence effective as of the State Bar Annual Meeting in September. Sandra Shippey requested consideration of the application and nomination of Wansun Song. Sandra Shippey noted that as Wansun Song is with Pillsbury Winthrop (as is a current Committee member, Bob Slattery), and that the BLS has a policy that the Committee can only have one member from a law firm on the Committee at any given time. Therefore, Wansun Song cannot be appointed to fill a current vacancy, but he will be eligible for appointment when Bob Slattery’s term expires in 2005. Consequently, consideration of Wansun Song’s application was tabled for a future Committee meeting.

B. COMMITTEE WORK

1. **Article 2/2A Subcommittee.** The draft response of the UCC Committee to the National Association of Manufacturers (NAM) critique of Amended Article 2 was submitted for review and comment. Paul Barkes led a discussion regarding the NAM critique of Article 2 Section 2-313B. Lary Lawrence and Sean Scott indicated that they would consult with a constitutional law scholar regarding the First Amendment issues raised in the NAM objection to Section 2-313B. Other issues that were discussed were the safe harbor “conspicuousness” issue for warranty disclaimers; and UETA and E-sign comparisons to the authentication provided by Amended Article 2.

2. **Uniform Certificate of Title Act Subcommittee.** Konrad Schreier reported to the Committee that the UCOTA subcommittee had reviewed the latest draft of the Uniform Certificate of Title Act (UCOTA) received from NCCUSL on December 6, 2004. He reported that the latest draft shows the intention of the drafters to modify the terms of UCOTA to make them similar or identical to corresponding terms of the UCC. In addition, other new language had been added to UCOTA that needs to be reviewed and considered carefully by the subcommittee. Mr Schreier indicated that a subcommittee meeting was planned in the next few days with the goal of providing to the Committee for review prior to the next Committee meeting draft written comments from the UCC Committee regarding the latest draft of UCOTA.

3. **Legislative Subcommittee.** Jim Hayes indicated that the initial legislative search results received so far were sent out to the subcommittee for review, and that the subcommittee was working on a report that the subcommittee intends to submit to the Committee on or before the March 3rd meeting that describes any legislation of interest to the Committee. Jim Hayes also mentioned that based upon the expanded search criteria developed last fall, there is a voluminous number of “hits” that will have to be screened by the subcommittee and that many of the hits are likely to be in legislation that is not of any real interest to the Committee.

4. **Report of Control Agreement for Deposit Accounts Subcommittee.** Doug Krause informed the Committee that the UCC Committee’s memo regarding the “Comments of the UCC Committee of the California Bar Association on the 11/29/04 Draft of the Model Deposit Account Control Agreement” was forwarded to the NCCUSL Control Deposit Account Drafting Committee, and that Harry Sigman has met with the Drafting Committee to discuss these comments.

5. **Electronic Filing System Subcommittee.** Vasco Morais reported that the subcommittee paralegal task force had made considerable progress towards surveying the 50 states to determine the electronic web-based UCC filings services each of the states offered. At approximately 10:30 a.m., Kathleen Vasquez, of the Secretary of State’s office called in to the meeting and reported to the Committee that: (a) the current certification date for UCC filings was January 30th; (b) there had been 60,000 XML business to business filings made since August 12, 2004 (the UCC Connect roll-out date); (c) there were currently 8 XML (bulk filing) customers; and (d) from 2003 to 2004, UCC-1 filings were up by 3.5% overall, but UCC-3 filings were down by 1%. Ms Vasquez also noted that there was a 7% overall decreases in paper-based filings, however, a 75% increases in UCC-11 searching on the web, which include wild-card

searches. Ms. Vasquez also noted that non-paper, non XML filings were down by 25%. Mr. Sigman inquired as to why anyone would still be using counter searches. Mr. Morais suggested that the Electronic Filing subcommittee should provide Ms. Vasquez with specific statistical criteria that the Committee would request the Secretary of State's office to track. Ms. Vasquez welcomed this suggestion.

6. **Hidden Lien Subcommittee.** Bob Anderson reported he had not received from the Hidden Liens Subcommittee any results of research regarding hidden liens that he had requested from each of the subcommittee members. A general discussion was held as to how many liens each subcommittee member should be expected to analyze prior to the next Committee meeting. Mr. Morais suggested 2 or 3 hidden liens each, and Mr. Anderson suggested 5 hidden liens each.

7. **Uniform Foreign-Country Money Judgments Recognition Act.** Ms. Shippey indicated that the Committee was once gain soliciting volunteers to review the draft of the Uniform Foreign-Country Money Judgments Recognition Act proposed by NCCUSL, and this may be the last chance to form a subcommittee to review the draft. Audrey Sung indicated that she would participate in such a subcommittee. It was agreed that Audrey Sung would make an initial determination of the resources needed to review the draft.

C. OTHER SUBCOMMITTEE WORK

8. **Report of Foreign Centralized Filing Subcommittee.** Arnold Rosenberg reported that the subcommittee was making good progress and that he had received results back from seven countries, and that the total number of countries to be reviewed has been reduced from 95 to 28 or 30 of the most commercially important countries.

9. **Report of E-Commerce Subcommittee.** Francis Ferrer and Audrey Sung reported that that the E-Commerce subcommittee was examining E-check conversion which converts an Article 3draft to an EFT (Reg. E).

10. **Report of Liaison Subcommittee.** Bob Slattery advised that he remained in contact with NCCUSL and he is waiting for the draft of the Native American Tribal Article 9.

11. **Report on Publications and Programs.** Mr. Schreier reported that he presented to the Executive Committee three possibilities as possible presentation topics by the UCC Committee at the State Bar Annual Meeting, including (a) Article 2/2A revisions; (b) Deposit Account Control Agreements; and (c) hidden liens, and that the subcommittee was still waiting for the final determination of the outcome of the submissions. Mr. Schreier also noted that the UCC Committee has met its quota for submission of articles to the Business Law News for the 2005-2006 year. Mr. Morais reported that the first of the UCC Committee "e-briefs" had been sent to the UCC constituency list, and that the response was very positive. He added that additional content for future e-briefs and any Committee member willing to take over the monthly responsibility for creating and sending the "e-briefs," would be welcome.

12. ExComm. Liaison Update. Pauline Stevens reported that the Opinions subcommittee of the Executive Committee was still reviewing the Report of the Uniform Commercial Code Committee of the Business Law Section of the State Bar of California on Legal Opinions in Personal Property Secured Transactions and that such report should be ready for dissemination back to the UCC Committee for final review shortly.

13. Report of Website Development and E-Communications Committee. Jean LeBlanc noted that the website pages had been updated with the new roster and encouraged the Committee to provide materials for additional content..

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The meeting was adjourned at approximately 12:30 p.m.

Attendance:

Sandra L. Shippey	Present
Vasco H. Morais	Present
R. Paul Barks	Present
Harry C. Sigman	Present
Robert B. Anderson	Present
David V. Biesemeyer	Absent
James S. Cochran	Present
Barry A. Dubin	Present
Francis X. Ferrer	Present
Barry A. Graynor	Present
James A. Hayes, Jr.	Present
Janice E. Kosel	Present
Doug Krause	Present
Hugh Lawrence	Present
Lary Lawrence	Present
Jean LeBlanc	Present
Lisa Olsen	Present
Matthew P. Polesetsky	Absent
Arnold Rosenberg	Present
Brenda H. Ruttenberg	Present
Alfred Sanchez, Jr.	Absent
Sean Scott	Present
Konrad F. Schreier III, Esq.	Absent
Robert V. Slattery, Jr.	Present
Audrey L. Sung	Present
David W. Thill	Present
Pauline Stevens	Present